UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X
UNITED STATES OF AMERICA

v.

07 Crim. 227 (LAK)

GERALD JONES,

Defendant.

- X

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT
GERALD JONES'S MOTION TO WITHDRAW HIS PLEA OF GUILTY

CHADBOURNE & PARKE, LLP
30 Rockefeller Plaza
New York, NY 10112
(212) 408-5100

Attorneys for Defendant Gerald Jones

This memorandum of law is submitted in support of the motion of defendant Gerald Jones ("Jones") to be permitted to withdraw his guilty plea. For the reasons stated below, it is respectfully submitted that such relief is fair and just under the circumstances of this case, and accordingly, is warranted pursuant to Federal Rule of Criminal Procedure 11(d)(2)(B).

PROCEDURAL HISTORY

On March 23, 2007, the United States Attorney filed a one count information, charging Jones with conspiracy to obstruct an agency proceeding. That same day, Jones entered a guilty plea pursuant to a cooperation agreement with the United States Attorney for the Southern District of New York. Along with Jones, three other individuals associated with the automotive supplier Collins & Aikman: John A. Galante, Thomas Gougherty, and Chris Williams (the "Cooperating Defendants"), entered guilty pleas to related charges according to similar cooperation agreements with the United States Attorney for the Southern District.

Under the agreements, Jones and the Cooperating Defendants assisted in the government's investigation of individuals connected with Collins & Aikman. The government sought to prosecute a number of individuals from Collins & Aikman, including the company's CEO, David Stockman. Jones and the Cooperating Defendants were not sentenced pending their cooperation in the investigation of Collins & Aikman.

Shortly after Jones agreed to cooperate, Stockman and three other Collins & Aikman executives were indicted by the government in United States v. David Stockman, et al., 07 Crim. 220 (BSJ). On January 9, 2009, all of the charges against Stockman and the three other executives were dismissed. In acknowledgment of the dismissal in Stockman, the government wrote to this Court on July 6, 2009. (attached as Exhibit A to the accompanying Affirmation of Karl H. Buch, dated July 10, 2009). This letter detailed that the charges which Jones pled guilty to "aros[e] from substantially the same events and circumstances set forth" in the Stockman criminal proceeding. Id. The government stated that they would not oppose a motion to withdraw Jones's guilty plea because "under the limited facts of this case a fair and just reason exists for such withdrawal." Id. The government noted that it reached this conclusion following a re-assessment of the evidence against Jones, including evidence acquired after Jones entered the guilty plea. This evidentiary review led the government to conclude that "further criminal prosecution would be inequitable and not in the interests of justice." Id.

The government wrote similar letters to the courts hearing the cases of the Cooperating Defendants. Following the submission of those letters, the respective courts allowed the Cooperating Defendants to withdraw their guilty pleas. In their letter to this Court, the government specifically made a point of noting that the actions against the Cooperating Defendants have been dismissed. Id.

LEGAL ANALYSIS

Jones should be permitted to withdraw his guilty plea because actions against defendants in the Stockman case have been dismissed and the Cooperating Defendants have been allowed to withdraw their guilty pleas. Defendants are permitted to withdraw guilty pleas before sentencing by the court if "the defendant can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). Motions to withdraw a guilty plea submitted prior to sentencing "should be liberally granted." United States v. Rosen, 409 F.3d 535, 546 (2d Cir. 2005) (*quoting* United States v. Gonzalez, 970 F.2d 1095, 1099-1100 (2d Cir. 1992)). A number of courts have found that the reason for withdrawing the guilty plea need not be compelling, and that the standard is a "relatively lenient one." 1A Charles Alan Wright & Andrew D. Leipold, Federal Practice and Procedure § 181 (4th ed. 2008).

The circumstances surrounding the withdrawal of the guilty plea in this case are compelling and warrant allowing Jones to withdraw his guilty plea. The government has concluded that continuing to prosecute Jones would not be in the interest of justice. Buch Aff. Exh. A. Standing alone, the government's assertion is compelling evidence that Jones should be allowed to withdraw his guilty plea. *See* Nagelberg v. United States, 377 U.S. 266, 266-67 (1964) (per curium) (vacating the denial of a motion to withdraw a guilty plea in light of the government's concurrence in the motion); United States v. Santos, 278 F. Supp. 2d 143, 145-46 (D. P.R. 2003).

The facts in United States v. Santos are particularly analogous to this case. In Santos, the court allowed three defendants to withdraw their guilty pleas in light of the government's dismissal of charges in cases against three other similarly situated defendants. Santos, 278 F. Supp. 2d at 145-46. The government opposed the withdrawal of the plea as to two of the defendants and acquiesced in the withdrawal of the third. Id. The court immediately dismissed the charges against the third defendant, and after discussing the inconsistency and inherent unfairness of the government's position, concluded that the law must be applied in an "evenhanded manner," so that charges against the other two defendants must be dismissed. Id.

In this case, the government *does not* oppose the withdrawal of Jones's guilty plea; rather it concludes that to continue prosecution would not be in the interest of justice. Buch Aff. Exh. A. As previously discussed, the government has already dismissed proceedings against defendants in Stockman. In fact, Jones, a former employee of Collins & Aikman, pled guilty pursuant to a cooperation agreement relating to the Stockman action, and was scheduled to be a witness against his former CEO and three other executives at his former company. In addition, the government has consented to, and other courts have allowed, the Cooperating Defendants to withdraw their guilty pleas.

- May 13, 2009, Judge Harold Baer granted the cooperating defendant's application in United States v. John Galante, 07 Cr. 224 (HB);
- May 14, 2009, Judge Robert P. Patterson granted the cooperating defendant's application in United States v. Chris Williams, 07 Cr. 229 (RPP);
- May 15, 2009, Judge Denny Chin granted the cooperating defendant's application in United States v. Thomas Goucherty, 07 Cr. 223 (DC).

We submit that, under these circumstances, continuing to prosecute Jones would be exceedingly unfair.

Finally, there has been no undue delay in Jones's motion to withdraw his guilty plea. While it is acknowledged that Jones entered his guilty plea in March 2007, the proceedings in the Stockman case only recently terminated in January 2009. In addition, Jones recently acquired new counsel, who entered an appearance in March of 2009. Jones's counsel has been working diligently, in concert with the government, in order to withdraw Jones's guilty plea. Discussions only recently produced a letter from the government advising this Court that it would not oppose the withdrawal of Jones's guilty plea. Additionally, the government will not be prejudiced by this motion, since it has taken the position that it does not object to Jones's withdrawal of his plea.

CONCLUSION

For all of the foregoing reasons, defendant Gerald Jones respectfully requests that this Court enter an order permitting him to withdraw his previously entered plea of guilty, pursuant to Federal Rule of Criminal Procedure 11(d)(2)(B).

Dated: New York, New York
July 17, 2009

CHADBOURNE & PARKE

By: ___s/s Karl H. Buch______

30 Rockefeller Plaza
New York, NY 10112
(212) 408-5100
kbuch@chadbourne.com

Attorneys for Gerald Jones